

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRED FELEKI MARTINEZ,  
Plaintiff,  
v.  
PETERSON,  
Defendant.

Case No. 2:21-cv-01779-DAD-JDP (PC)

**ORDER**

MODIFYING SCHEDULING ORDER,  
EXTENDING DISCOVERY, AND DENYING  
PLAINTIFF'S MOTIONS TO COMPEL AS  
UNNECESSARY

ECF Nos. 50, 56, 58, & 66

**FINDINGS AND RECOMMENDATIONS**

THAT PLAINTIFF'S MOTION TO AMEND  
THE COMPLAINT BE DENIED AND  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT BE DENIED WITHOUT  
PREJUDICE TO REILING

ECF Nos. 51 & 55

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Plaintiff brought this action in September 2021, ECF No. 1, and I issued a scheduling order after screening the case, ECF No. 28. That order provided that discovery, including any motions to compel, was to be completed by April 14, 2023. ECF No. 28 at 4-5. The schedule also provided that any motion to amend the complaint must be submitted by that date. *Id.* at 5. Plaintiff did not file any motion to compel or to amend his complaint by that date. Then, on

1 October 5, 2023, approximately two weeks before defendants filed their motion for summary  
2 judgment, ECF No. 51, plaintiff filed his first motion to compel. ECF No. 50. Thereafter, he  
3 filed an additional two motions to compel and a motion “to name Doe defendant,” which I  
4 interpret to be a motion to amend complaint. ECF Nos. 55, 56, & 58. Defendant has opposed all  
5 of plaintiff’s motions, arguing that plaintiff was not diligent in conducting discovery or in moving  
6 to amend his complaint. ECF Nos. 53, 61-63.

7 Defendant is broadly correct that plaintiff’s motions are late and that he has not shown  
8 diligence in complying with the case’s schedule. To excuse the lateness of his motions, plaintiff  
9 argues that serious mental health issues, including an attempted suicide, precluded his timely  
10 action. ECF No. 56 at 2-3. Accepting as true plaintiff’s claims about the gravity of his mental  
11 health issues, and accounting for his disadvantaged position as a *pro se* prisoner litigant, I will  
12 modify the scheduling order to allow him a short window in which to propound interrogatories  
13 and requests for production. Any interrogatories and requests for production must be served on  
14 defendant within thirty days of this order’s entry. Any motions to compel must be filed within  
15 seventy-five days of this order’s entry. In light of this modification, I will deny the pending  
16 motions to compel as unnecessary.

17 I will also, however, recommend that plaintiff’s motions to amend be denied. ECF Nos.  
18 55 & 67. As I noted above, we are well past the deadline for amendment and, while I am willing  
19 to afford plaintiff a limited window for discovery due to his mental health struggles, allowing him  
20 to amend his complaint threatens to set this action, which was filed on September 29, 2021, back  
21 yet further. Plaintiff has also failed to comply with the local rules, which require him to provide a  
22 copy of his proposed amended complaint with his motion. Under Local Rule 137(c), a motion to  
23 amend a complaint must be accompanied by the proposed complaint as an exhibit. “When a party  
24 fails to comply with Local Rule 137(c), the party’s request should be denied.” *Herrera v. Cal.*  
25 *Highway Patrol*, No. 1:15-CV-01882-TLN-SAB, 2017 U.S. Dist. LEXIS 20822, \*4 (E.D. Cal.  
26 Feb. 14, 2017). The failure to attach a proposed complaints to his motions to amend precludes an  
27 adequate analysis of how much leave to amend would prejudice defendant and whether any new  
28 claims would be futile.

1  
2 In light of the extension of time to conduct discovery, I will recommend that defendant's  
3 pending motion for summary judgment be denied without prejudice to refiling at the amended  
4 close of discovery.

5 Accordingly, it is ORDERED that:

6 1. The scheduling order is modified with respect to discovery. The parties shall have  
7 thirty additional days from the date of this order to propound additional discovery. Any motions  
8 to compel discovery must be filed within seventy-five days of this order's entry. These deadlines  
9 will not be extended.

10 2. Plaintiff's motions to compel, ECF Nos. 56, 58, & 66 are DENIED.

11 Further, it is RECOMMENDED that:

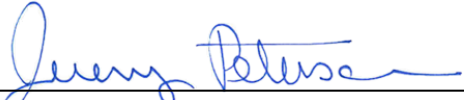
12 1. Plaintiff's motion to name Doe defendant, construed as a motion to amend complaint,  
13 ECF No. 55, and his motion to amend, ECF No. 67, be DENIED.

14 2. Defendant's motion for summary judgment, ECF No. 51, be DENIED without  
15 prejudice to refiling at the new close of discovery.

16 These findings and recommendations are submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
18 after being served with these findings and recommendations, any party may file written  
19 objections with the court and serve a copy on all parties. Such a document should be captioned  
20 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
21 objections shall be served and filed within fourteen days after service of the objections. The  
22 parties are advised that failure to file objections within the specified time may waive the right to  
23 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
24 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: March 11, 2024

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE